

11868-11
RECORDATION NO. 11868-11 Filed 1425

JUN 2 1980 -4 05 PM

INTERSTATE COMMERCE COMMISSION

Amtrak



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June 2, 1980

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Secretary
Interstate Commerce Commission
Washington, D. C. 20423

INTERSTATE COMMERCE COMMISSION

0-154A184

JUN 2 1980

110.00

CC Washington, D. C.

Dear Sir:

Herewith for recording pursuant to Section 20c of the Interstate Commerce Act are 5 executed counterparts of:

1. a Loan Agreement and Chattel Mortgage dated as of May 30, 1980 between National Railroad Passenger Corporation, as lender and Bombardier Credit, Inc., as borrower;
2. a Lease Agreement dated as of January 28, 1977 between Bombardier Inc., as lessor, and National Railroad Passenger Corporation, as lessee, with an Assignment Agreement dated as of May 30, 1980 among Bombardier, Inc., as assignor, Bombardier Credit, Inc., as assignee, and National Railroad Passenger Corporation, as lessee.

The addresses of the parties to the above listed documents are as follows:

National Railroad Passenger Corporation
400 North Capitol Street, N. W.
Washington, D. C. 20001

Attention: Director, Equipment Maintenance

Bombardier Credit, Inc.
c/o Elliot & Hutchins
East Main Street Road
Malone, New York 12953

Attention: President

RECEIVED
JUN 2 4 02 PM '80
I.C.C.
FEE OPERATION BR.

Bombardier, Inc.
800 Dorchester Boulevard, West
Montreal, Quebec

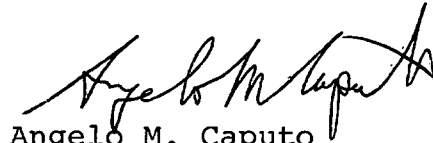
Attention: Vice President, Marketing
Mass Transit Division

The railroad equipment covered by these documents consists of two LRC trains each consisting of one diesel powered locomotive bearing numbers 38 and 39 and four coaches and one food service car bearing numbers 40 to 49, inclusive.

Also enclosed is a check in the amount of \$110.00 for the required recordation fee.

Please accept for recordation two counterparts of each of these documents, stamp the remaining 3 each with the appropriate recordation number, and return all 3 to the person delivering the same, together with your fee receipt.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Angelo M. Caputo", with a stylized flourish at the end.

Angelo M. Caputo
Assistant Vice President-
Finance and Controller

ASSIGNMENT AGREEMENT

JUN 2 1980 -4 05 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT made the 30TH day of *MAY*, 1980.

BETWEEN: BOMBARDIER INC., a corporation incorporated under the laws of Canada (hereinafter called "BOMBARDIER")

OF THE FIRST PART

AND: BOMBARDIER CREDIT, INC., a corporation incorporated under the laws of the Commonwealth of Massachusetts, one of the United States of America (hereinafter called "BOMBARDIER CREDIT")

OF THE SECOND PART

AND: NATIONAL RAILROAD PASSENGER CORPORATION, a corporation incorporated under the laws of the District of Columbia, one of the United States of America (hereinafter called "AMTRAK")

OF THE THIRD PART

WITNESSETH:

WHEREAS by agreement in writing dated as of January 28, 1977 and executed as of February 5, 1980 between BOMBARDIER and AMTRAK (hereinafter referred to as the "Lease Agreement"), BOMBARDIER agreed to construct for lease to AMTRAK on the terms and conditions therein set out, two LRC trains ("Trains") each consisting of one diesel powered locomotive, four coaches and one food service car containing parlor car type accomodation, all as described in the specifications (as amended from time to time) attached to the said Lease Agreement as Exhibit A ("Specifications");

WHEREAS BOMBARDIER CREDIT desires to purchase said Trains from BOMBARDIER subject to the terms hereof; and

WHEREAS AMTRAK has joined in these presents for the purpose of consenting to the assignment of the aforementioned Lease Agreement to BOMBARDIER CREDIT.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND UNDERTAKINGS HEREINAFTER SET FORTH, THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

1. Definitions

In this Agreement, unless the context otherwise requires, the following words and phrases shall have the meaning set forth after them:

- a) Lease Term: means, in respect of each Train, the respective terms set forth in Section 2 of the Lease Agreement;
- b) Purchase Date: means, in respect of each Train, the date of acceptance thereof by Amtrak.

2. Purchase and Sale

BOMBARDIER agrees to sell to BOMBARDIER CREDIT and BOMBARDIER CREDIT agrees to purchase from BOMBARDIER the two (2) Trains as hereinbefore more particularly described. The first Train shall be purchased from BOMBARDIER on the Purchase Date for such Train for a consideration of \$4,412,378.10 (U.S. Funds). The second Train shall be purchased from BOMBARDIER on the Purchase Date for such Train for a consideration of \$4,412,378.10 (U.S. Funds).

3. Purchase Date

The purchase and sale of the Trains shall be completed, at the head office of BOMBARDIER at 3:00 o'clock in the afternoon, Montreal time, on the respective Purchase Dates for such Trains by delivery to BOMBARDIER CREDIT of:

- 1) a Bill of Sale for each such Train;
- 2) the certificate provided for in Section 4 hereof; and
- 3) with respect to each Train the Certificate of Acceptance provided by Amtrak under the Lease Agreement.

The purchase price for each Train will be satisfied by delivery to BOMBARDIER on the respective Purchase Dates of a cheque payable to BOMBARDIER in U.S. funds for the appropriate amount referred to in Section 2 above.

Amtrak shall give BOMBARDIER and BOMBARDIER CREDIT at least three (3) days' prior notice of the date on which it will execute the Certificate of Acceptance in respect of each Train so that the respective Purchase Dates may occur simultaneously therewith.

4. BOMBARDIER Certificate

BOMBARDIER shall deliver to BOMBARDIER CREDIT on the respective Purchase Date for each Train a certificate, dated as of such date, certifying that:

a) BOMBARDIER is a corporation duly incorporated and subsisting under the laws of Canada, has the corporate power to hold its property and to carry on its business to make and perform this Agreement;

b) BOMBARDIER owns and possesses good and marketable title to each of the Trains, free of all liens,

claims from which liens could arise, charges, encumbrances, mortgages and adverse claims whatsoever, other than the interest of AMTRAK under the Lease Agreement;

c) neither the execution nor the delivery of this Agreement nor the fulfillment or compliance with the terms hereof will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, the letters patent of BOMBARDIER, or any agreement, instrument, order, judgment, decree, statute, law, rule or regulation to which BOMBARDIER is subject or require any consent, approval or other action by any court or administration or governmental body;

d) the Trains to be delivered to BOMBARDIER CREDIT pursuant to this Agreement will be newly constructed by BOMBARDIER and will not have been previously used by any person for any purpose.

5. Delivery

Delivery of the Trains shall be taken by BOMBARDIER CREDIT at BOMBARDIER's plant in Montreal.

6. Warranty

The warranty obligation of BOMBARDIER set forth in this Section is in lieu of all other warranties expressed or implied arising by law or otherwise including but not limited to any implied warranty of merchantability or fitness for a particular use.

- a) BOMBARDIER warrants that the Trains sold hereunder shall be in compliance with the Specifications.
- b) BOMBARDIER warrants that the Trains manufactured by it, including such components as may be manufactured by other manufacturers and supplied by BOMBARDIER as part of the Trains, are free from defects in design, material and workmanship.
- c) BOMBARDIER's liability under the warranties referred to in sub-Sections a) and b) above of this Section 6 is limited to repair or replacement, at BOMBARDIER's option, of any part of the Trains, which, despite recommended use and maintenance, should prove to be defective in design, material or workmanship, or does not comply with the Specifications as well as any damage to the Trains resulting therefrom.

BOMBARDIER's obligation shall commence with the date of acceptance by AMTRAK and continue during the Lease Term for each Train provided always that BOMBARDIER CREDIT gives prompt notice in writing to BOMBARDIER of any defect which may arise and of the damages occasioned by same.

d) BOMBARDIER's liability under the warranties referred to in sub-Sections a) and b) above of this Section 6 shall not extend to any defect or defects which were caused in whole or in part by normal wear and tear, by failure to comply with its operating and maintenance recommendations, by misuse, negligence or accident, by repairs, modifications or alterations not authorized or approved by it, or by damage in transit after delivery. Except as otherwise stated herein BOMBARDIER shall not be liable to BOMBARDIER CREDIT for any indirect or consequential damages resulting from any such defect including but without limitation, loss of profits or revenue, loss of use of equipment, or any other substantially similar liability. Upon the expiration of the warranty for each Train, all such liability with respect to such Train, or any part or parts thereof including any part or parts repaired or replaced by reason of this warranty, shall terminate.

e) BOMBARDIER CREDIT agrees that AMTRAK shall during the term of the Lease Agreement be entitled to the benefits of the foregoing warranty provisions running from BOMBARDIER to BOMBARDIER CREDIT.

SUBJECT TO THE FOREGOING, BOMBARDIER CREDIT MAKES NO WARRANTY WITH RESPECT TO THE TRAINS, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE TRAINS.

7. Assignment of Lease Agreement

In consideration of the prices set forth in Section 2 above, BOMBARDIER hereby assigns, transfers and sets over unto BOMBARDIER CREDIT all its right, title, interest, powers, privileges and other benefits in, to and under the Lease Agreement.

AMTRAK hereby consents and agrees to the assignment, transfer and setting over unto BOMBARDIER CREDIT of BOMBARDIER's right, title, interest, powers, privileges and other benefits in, to and under the Lease Agreement and acknowledges

that, subject to Section 9 hereof, BOMBARDIER CREDIT will be substituted for BOMBARDIER as the owner and lessor of the Trains under the Lease Agreement for all purposes.

Notwithstanding the foregoing, it is understood that AMTRAK shall retain all its rights and recourses under the said Lease Agreement.

AMTRAK further agrees that all amounts from time to time payable by it under the Lease Agreement shall henceforth be paid to BOMBARDIER CREDIT other than payments for spare parts made under Section 18 of the Lease Agreement.

8. BOMBARDIER CREDIT Undertaking

BOMBARDIER CREDIT hereby undertakes to perform all of the obligations encumbant upon BOMBARDIER under the Lease Agreement except the obligation under Section 18 thereof to repurchase unused spare parts and used warranty parts and the obligation to make payments as a result of late delivery under Section 34 thereof which shall remain with BOMBARDIER.

9. BOMBARDIER Undertaking

BOMBARDIER undertakes and agrees for the benefit of BOMBARDIER CREDIT and AMTRAK to provide to AMTRAK on behalf of BOMBARDIER CREDIT all services required of BOMBARDIER under

the Lease Agreement. In consideration for the performance by BOMBARDIER of all of the services required to be performed under the Lease Agreement subsequent to the Purchase Date, including, but not limited to, any modifications of the Trains or related activities under Section 8 and Subsection 26.2, the providing of technical assistance under Section 11.2, inspection of the Trains on redelivery under Subsections 16.1 or 16.2, and the determination of the reliability standard and compliance therewith under Section 24, BOMBARDIER CREDIT shall pay to BOMBARDIER on a quarterly basis BOMBARDIER's "cost" (as defined below) in providing such services. "Cost" for purposes of the preceding sentence shall be the sum of (i) BOMBARDIER's direct costs identified specifically with providing the services required under this clause, including, but not limited to, costs for compensation, bonuses and travel expenses attributable to employees directly engaged in performing such services and for material and supplies directly consumed in rendering such services, plus (ii) BOMBARDIER's indirect costs which relate to (but are not included in) such direct costs, including costs with respect to utilities, occupancy, supervisory and clerical compensation and other overhead burdens of the department incurring the direct costs and an allocable share of such costs of supporting departments; provided, however, that such costs shall not include interest on any indebtedness, expenses associated with the issuance of stock or the maintenance of shareholder relations,

nor expenses of compliance with Canada governmental regulations or policies. BOMBARDIER agrees that it will continue to render such services notwithstanding any failure by BOMBARDIER CREDIT to pay the cost thereof and that AMTRAK will not be responsible for any such costs which it is not otherwise liable for under the Lease Agreement.

All other services required to be performed under the Lease Agreement shall be performed by BOMBARDIER in consideration of the Purchase Price provided in Section 2 hereof.

10. Spare Parts

BOMBARDIER undertakes to provide to AMTRAK such spare parts for the Trains as the latter may require and confirms that the warranty provisions set forth in Section 12 of the Lease Agreement shall apply to such spare parts.

11. Purchase Option and Buy-Back Agreement

In the event that AMTRAK exercises its purchase option with respect to the Trains under the Lease Agreement, BOMBARDIER agrees to warrant the conveyance of legal title to the Trains to AMTRAK free of any adverse interest. BOMBARDIER CREDIT agrees that AMTRAK's purchase price under the Lease Agreement may be offset by any amount then owing by BOMBARDIER

CREDIT to AMTRAK. Subject to AMTRAK's option to purchase the Trains pursuant to Exhibit H of the Lease Agreement, BOMBARDIER undertakes at BOMBARDIER CREDIT's option exercisable any time up to 6 months after termination of the Lease Term for a Train to purchase such Train or Trains from BOMBARDIER CREDIT at a price of \$4,073,725.50 (U.S. funds) for each such Train and to pay such price directly to AMTRAK within five (5) business days after exercise of the option to the extent of any amounts owed to AMTRAK by BOMBARDIER CREDIT under the Lease Agreement or any related agreements, provided, however, BOMBARDIER CREDIT shall not exercise this option with reference to a Train during the Lease Term for such Train without the consent of AMTRAK. If BOMBARDIER purchases a Train or Trains pursuant to this option before the termination of the Lease Term therefor, BOMBARDIER agrees to lease and AMTRAK agrees to take the Train or Trains on the same terms as such Train or Trains had theretofore been leased by BOMBARDIER CREDIT to AMTRAK.

BOMBARDIER agrees that in the event it repurchases the Trains pursuant to this Section, it will use its best efforts to negotiate the sale of the Trains on the best available terms following termination of the Lease Term therefor, and agrees to pay the excess of the proceeds of any such sale (after deduction for reasonable selling expenses) over the purchase price provided in this Section to BOMBARDIER CREDIT immediately upon the closing of such sale.

12. Additional Warranty

In the event the Trains are sold by BOMBARDIER CREDIT or any secured party which has acquired a security interest in the Trains to any person, firm or corporation other than BOMBARDIER or AMTRAK within eighteen (18) months after termination of the Lease Term, then the warranty provisions contained in Section 6 above shall continue in favour of BOMBARDIER CREDIT, any such secured party, and any such subsequent purchaser for an additional period of twelve (12) months from the date of any such sale.

13. Indemnities

13.1 BOMBARDIER shall indemnify and hold harmless BOMBARDIER CREDIT and each of BOMBARDIER CREDIT's officers, employees and agents from and against all claims and liabilities, including costs and expenses incident thereto, which may be suffered by, accrue against or be recoverable from BOMBARDIER CREDIT and/or any of BOMBARDIER CREDIT's officers, employees or agents by reason of loss of or damage to BOMBARDIER CREDIT or third party property or the Trains, or injury to or death of any person arising out of or in connection with the testing, operation and maintenance of the Trains during the Lease Terms if such loss, damage, injury or death is caused by the sole negligence of BOMBARDIER or any

defect subject to warranty under Section 12. BOMBARDIER shall not be liable to BOMBARDIER CREDIT for any indirect or consequential damages including but without limitation loss of BOMBARDIER CREDIT's profits or revenues, loss of use of BOMBARDIER CREDIT's equipment, or any other substantially similar liability; however, this subsection 13.1 shall not apply in any case where the negligence of BOMBARDIER CREDIT or any of BOMBARDIER CREDIT's officers, employees or agents or any third party contributed to the loss, damage, injury or death.

13.2 BOMBARDIER shall bear the expense of prosecuting the settlement and defense of, and pay any settlement or final judgment disposing of any claim, action or proceeding arising from Section 13.1 above. In any case where contributory negligence of the other party is alleged, that party shall be entitled to separate representation by counsel of its own choice.

13.3 In case any claim, action or proceeding shall at any time be brought against BOMBARDIER CREDIT asserting a liability for which BOMBARDIER is responsible, BOMBARDIER CREDIT shall promptly give notice to BOMBARDIER of such claim, action or proceeding and thereafter provide all such information as may from time to time be requested.

13.4 Taxes on or measured by Bombardier's income which may be asserted or due in the United States under the laws of the United States and any subdivision thereof, including but without limitation any state, county, municipality, or the District of Columbia, as a result of the lease or operation of the Trains shall be paid or otherwise disposed of by BOMBARDIER at its expense. BOMBARDIER agrees to indemnify and hold BOMBARDIER CREDIT harmless from any liability for such taxes including interest and penalties thereon or any liability for amounts which BOMBARDIER CREDIT at the instruction of BOMBARDIER does not withhold for payment thereof. BOMBARDIER agrees to provide BOMBARDIER CREDIT upon its reasonable request with a form of security reasonably acceptable to BOMBARDIER CREDIT to secure the obligations of BOMBARDIER to BOMBARDIER CREDIT undertaken pursuant to this paragraph.

13.5 Liability for all taxes and levies which may be asserted or due in Canada under the laws of Canada as a result of the lease or operation of the Trains or purchase of the option items under Section 7.2 or the purchase of the Trains pursuant to Exhibit H hereof shall be paid or otherwise disposed of by BOMBARDIER at its expense. BOMBARDIER CREDIT shall promptly notify BOMBARDIER when any such tax or levy is claimed or otherwise asserted or assessed against BOMBARDIER CREDIT. Thereupon, BOMBARDIER shall promptly advise BOMBARDIER CREDIT whether BOMBARDIER intends to contest the amount or validity of such tax or levy. BOMBARDIER at its own

expense may undertake such contest with the full cooperation of BOMBARDIER CREDIT. However, BOMBARDIER CREDIT, at its expense and option, may be separately represented in such matters by counsel of its own choosing but BOMBARDIER shall retain control of the action or suit.

13.6 BOMBARDIER shall indemnify and hold harmless BOMBARDIER CREDIT and its officers, agents and employees against liability, including costs, for infringement of any patents, trademarks and service marks which have been registered with the United States Patent Office on or before the execution date of this Agreement in respect of the Trains, provided that such indemnification shall not apply to (a) any trademark, service mark or patent used or applied by BOMBARDIER CREDIT without the consent of BOMBARDIER, (b) a claimed infringement which is settled without the consent of BOMBARDIER, unless required by final decree of a court of competent jurisdiction, (c) any agreement with any third party as to the nature and extent of any losses, expenses, damages or costs or (d) with respect to any "free issue" material supplied by AMTRAK to BOMBARDIER. The foregoing indemnity shall not be effective unless BOMBARDIER shall have been notified in writing as soon as practicable by BOMBARDIER CREDIT of the claim or suit or action alleging the infringement, and unless BOMBARDIER CREDIT shall agree to be represented in the disposition of any claim or any such action or suit by

attorneys selected by BOMBARDIER at BOMBARDIER'S expense. BOMBARDIER CREDIT, at its expense, may be represented in such matters by counsel of its choosing. However, BOMBARDIER shall retain control of any claim, action or suit.

13.7 BOMBARDIER CREDIT agrees that AMTRAK shall during the term of the Lease Agreement be entitled to the benefits of the foregoing indemnity provisions running from BOMBARDIER to BOMBARDIER CREDIT.

14. Entire Agreement

This Agreement constitutes the entire agreement between the parties and there are no representations, warranties, collateral agreements, expressed or implied, statutory or otherwise relating to the sale and purchase of the Trains other than as contained herein.

15. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; provided, however, that none of the parties hereto may assign or transfer the benefit of this Agreement without the prior written consent of the other parties hereto. BOMBARDIER CREDIT may assign to AMTRAK the option to sell the Trains provided for in Section 11 above.

16. Governing Law

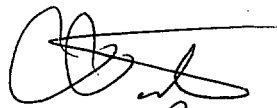
This Agreement shall be construed in accordance with and governed by the Laws of the District of Columbia.

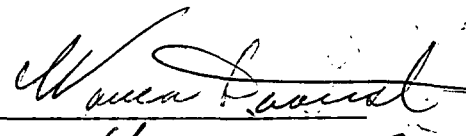
17. Language of Agreement

The parties acknowledge that they have agreed that this Agreement, as well as all related documents, be drawn up in the English language only. Les parties reconnaissent avoir convenu que ce contrat, ainsi que les documents s'y rattachant soient rédigés dans la langue anglaise seulement.

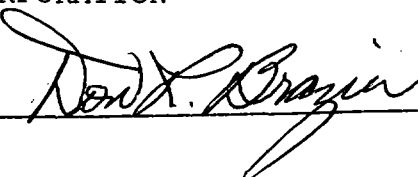
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first hereinabove written.

BOMBARDIER INC.

BY 
Marie Claire Pimoneau
BOMBARDIER CREDIT, INC.

BY X 
Jean Lussier
NATIONAL RAILROAD PASSENGER
CORPORATION

Attested by:
Elyse G. Hansen

BY 
Don X. Brazier

CANADA)
PROVINCE OF QUEBEC)
CITY OF MONTREAL) ss:
CONSULATE GENERAL OF THE)
UNITED STATES OF AMERICA)

I, Murrow B. Morris Consul of the
United States of America at Montreal, Province of Quebec, Canada,
duly commissioned and qualified, do hereby certify that, to the
best of my knowledge, Robert Brabander

was, at time of signing the annexed certificate, a Notary

at Montreal, Province of Quebec,
Canada, duly commissioned and qualified, to whose official acts
faith and credit are due.

Per the contents of the annexed document the Consulate
General assumes no responsibility.

IN WITNESS HEREOF, I have hereunto set my hand and
affixed the seal of the Consulate General of the United States
of America at Montreal, Quebec, Canada, this 30th day of May, 1980.


Murrow B. Morris

Murrow B. Morris
Consul of the United States of America

CORPORATE FORM OF ACKNOWLEDGEMENT

CANADA, PROVINCE OF QUEBEC

District of Montreal, ss:

On this 30TH day of MAY 1980,

before me personally appeared Marie-Claire Simoneau, to me personally known, who being by me duly sworn, says that she is the Secretary of BOMBARDIER INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Prabander, N.P.
Notary

CORPORATE FORM OF ACKNOWLEDGEMENT

B.

MONTREAL, QUEBEC

STATE OF

On this 30TH day of MAY 1980,

before me personally appeared JEAN RIVARD, to me personally known, who being by me duly sworn, says that he is the Corporate Secretary of BOMBARDIER CREDIT, INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Prabander, N.P.
Notary

CORPORATE FORM OF ACKNOWLEDGEMENT

DISTRICT OF COLUMBIA

On this 27th day of May 1980,
before me personally appeared Elyse G. Wander, to me personally known, who being by me duly sworn, says that she is the Corporate Secretary of NATIONAL RAILROAD PASSENGER CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Dorothy M Bryant

Notary

My Commission Expires July 14, 1982

STATE OF MINNESOTA)

) SS

COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 29th day of May, 1980, by Warren Daoust, the President of Bombardier Credit, Inc., a Massachusetts corporation, on behalf of the corporation.

Notary Public

